

PROPOSED 2011 CODE OF JUDICIAL CONDUCT

In 2007, the American Bar Association released a new proposed Code of Judicial Conduct, consisting of four canons. The Code presently in effect in Tennessee, and set out in Tennessee Supreme Court Rule 10, consists of five canons. The following outline generally describes certain important changes, additions, and deletions to the existing code.

A. OBSERVATIONS REGARDING THE AMENDED CODE AND KEY SUBSTANTIVE POINTS

1. The Preamble has been revised. The amended Preamble is limited to describing the general purpose and rationale of the Code.

2. The proposed draft includes a Scope section which is new and contains provisions from the existing Preamble to explain the structure of the Code and how the various parts of the Code are intended to operate.

3. The proposed Terminology section includes some new definitions, for example, “aggregate,” “contribution,” “domestic partner,” and other terms of relevance to the attached proposal.

4. The proposed Code is made up of four canons, as compared to the five canons as in the current Code. The TBA believes that realigning the format and numbering of the Code to conform to the ABA Model Code, and to provide canons, rules, and comments, will be helpful now and as the law develops in Tennessee and other jurisdictions.

B. SUMMARY OF MAJOR SUBSTANTIVE CHANGES FROM THE CURRENT CODE OF JUDICIAL CONDUCT

1. Section III of the Application section clarifies application of certain Code provisions to senior judges, part-time judges, continuing part-time judges, and pro tempore judges.

2. Rule 1.3, Comment [2] clarifies rules regarding judges supplying letters of recommendation, providing that a judge may, based upon personal knowledge, serve as a reference or write a letter of recommendation. Judicial letterhead may be used only if the judge's professional knowledge is germane to the purpose of the letter.

3. Rule 2.6 prohibits judges who participate in judicial settlement conferences from presiding over the trial or other contested issues in that matter. The recommendation is for both a prohibition in Rule 2.6 and an amendment to Tennessee Supreme Court Rule 31, Section 20.

4. Rule 2.9 clarifies the circumstances under which a judge may receive ex parte communications, noting that special rules in this regard apply to mental health and drug courts. Additionally, it adopts a limited exception to ex parte communications prohibitions for those involved in drug and mental health courts. However, disqualification may be required.

5. Rule 2.11 provides greater guidance on judicial disqualification and recusal. Included are factors such as the levels of campaign support for the judge or the judge's

opponent, the timing of the support, and independent expenditures.

For Discussion: Caperton v. A.T. Massey Coal Co., 129 S. Ct. 2252 (2009).

6. Rule 2.14 explains a judge's duty to act if he or she has a "reasonable belief" that a lawyer or another judge is impaired by drugs, alcohol or a mental, emotional or physical condition.

7. Rule 2.15 clarifies a judge's responsibility to report violations of the Rules of Professional Conduct and the Code of Judicial Conduct by lawyers and judges, including reference to judicial assistance programs.

8. Rule 3.7 details the manner and degree to which a judge may participate in educational, religious, charitable, fraternal, or civic organizations and activities, clarifying the circumstances under which a judge may solicit memberships for or receive an award from such an organization.

9. Rule 3.14 permits judges, spouses, and guests to attend, free of charge, events associated with educational, civic, religious, fraternal, and charitable organizations.

10. Rule 3.15 changes the gift threshold for required reporting from \$150 to \$250.

11. Rule 4.1, consistent with recent constitutional decisions, significantly lessens the restrictions on campaign activities while making it clear that campaign committees and judges must fully comply with campaign financial disclosure statutes, and that such activities may lead to disqualification. It provides that judges and judicial candidates

may not personally solicit or accept campaign contributions other than through a campaign committee. Additionally, it explains, in a detailed fashion as possible, allowable judicial speech. See also Rule 2.11(d).

For Discussion: Republican Party of Minnesota v. White, 536 U.S. 765 (2002).

12. Rule 4.2 explains the responsibilities of judicial candidates, including reviewing the content of campaign statements and materials and initiating fund-raising activities.